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**HOUSE BILL 66**  
**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**  
**INTRODUCED BY**  
**Patricia A. Lundstrom**

**AN ACT**  
**RELATING TO COMMITMENT PROCEDURES; ENACTING THE DETOXIFICATION**  
**REFORM ACT; PROVIDING FOR PROTECTIVE CUSTODY AND EMERGENCY**  
**COMMITMENT OF PERSONS IMPAIRED BY ALCOHOL OR DRUGS;**  
**ESTABLISHING REQUIREMENTS FOR DISCHARGE OF VOLUNTARY CLIENTS;**  
**LIMITING CIVIL LIABILITY OF PERSONS EMPLOYED BY PRIVATE**  
**TREATMENT FACILITIES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. A new section of Chapter 43, Article 2 NMSA 1978 is enacted to read:**

**"[NEW MATERIAL] SHORT TITLE. -- Chapter 43, Article 2 NMSA 1978 may be cited as the "Detoxification Reform Act". "**

**Section 2. Section 43-2-2 NMSA 1978 (being Laws 1977, Chapter 374, Section 1, as amended) is amended to read:**

**"43-2-2. DEFINITIONS. -- As used in ~~[Sections 43-2-2~~**  
**. 152751. 2**

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1 ~~through 43-2-15 NMSA 1978]~~ the Detoxification Reform Act:

2 A. "alcoholic" means a person who habitually lacks  
3 self-control as to the use of alcoholic beverages or uses  
4 alcoholic beverages to the extent that ~~[his]~~ the person's  
5 health is substantially impaired or endangered or [his] the  
6 person's social or economic function is substantially  
7 disrupted;

8 ~~[B. "approved private treatment facility" means a~~  
9 ~~private facility meeting the standards prescribed in~~  
10 ~~regulations of the division for the care and treatment of~~  
11 ~~alcoholics or drug-impaired persons;~~

12 ~~C. "approved public treatment facility" means any~~  
13 ~~institution under the supervision of the division and approved~~  
14 ~~by the substance abuse bureau for the care and treatment of~~  
15 ~~alcoholics or drug-impaired persons, or any public institution~~  
16 ~~approved by the bureau for the care and treatment of alcoholics~~  
17 ~~or drug-impaired persons; but not specifically under the~~  
18 ~~supervision of the division;]~~

19 B. "authorized person" means a physician, spouse,  
20 guardian or relative of a person to be committed to protective  
21 custody or any other responsible person, including a public  
22 employee, police officer or elected official;

23 C. "consistent with the least drastic means  
24 principle" means that the habilitation, protective custody or  
25 treatment and the conditions of habilitation, protective

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1 custody or treatment for the client separately and in  
2 combination:

3 (1) are no more harsh, hazardous or intrusive  
4 than necessary to achieve acceptable treatment objectives or  
5 protection for the client;

6 (2) involve no restrictions on physical  
7 movement except as reasonably necessary for protective custody,  
8 the administration of treatment, the security of the facility  
9 or the maintenance of order or for the protection of the client  
10 or another from physical injury; and

11 (3) are conducted in a suitable available  
12 facility closest to the client's place of residence;

13 D. "department" means the [~~health and environment~~]  
14 department of health;

15 E. "division" means the behavioral health services  
16 division of the [~~health and environment~~] department;

17 F. "drug-impaired person" means a person who  
18 habitually lacks self-control as to the use of drugs or uses  
19 drugs to the extent that [~~his~~] the person's health is  
20 substantially impaired or endangered or [~~his~~] the person's  
21 social or economic function is substantially disrupted;

22 G. "incapacitated [~~by alcohol or drugs~~] person"  
23 means [~~that~~] a person who, as a result of the use of alcohol or  
24 drugs, is unconscious or has [~~his~~] the person's judgment  
25 otherwise so impaired that [~~he~~] the person is incapable of

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1 realizing and making rational decisions;

2 H. "intoxicated person" means a person whose mental  
3 or physical functioning is substantially impaired as a result  
4 of the use of alcohol or drugs;

5 I. "likely to inflict serious physical harm on  
6 another" means that it is more likely than not that in the near  
7 future the person will inflict serious, unjustified bodily harm  
8 on another person or commit a criminal sexual offense as  
9 evidenced by behavior causing, attempting or threatening such  
10 harm, which behavior gives rise to a reasonable fear of such  
11 harm from that person;

12 J. "likely to inflict serious physical harm on  
13 himself" means that it is more likely than not that in the near  
14 future the person will attempt to commit suicide or will cause  
15 serious bodily harm to himself by violent or passive or other  
16 self-destructive means as evidenced by behavior causing,  
17 attempting or threatening the infliction of serious bodily harm  
18 to himself;

19 K. "protective custody" means voluntary or  
20 involuntary confinement for an intoxicated person, for a period  
21 not less than twelve hours or more than seventy-two hours in  
22 length and under conditions consistent with the least drastic  
23 means principle;

24 L. "public service officer" means a person  
25 appointed by the chief of police or sheriff to assist peace

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1 officers in the transportation of an intoxicated person under  
2 the Detoxification Reform Act;

3 ~~[I.]~~ M. "treatment" means the broad range of  
4 emergency, outpatient, intermediate and inpatient services and  
5 care, including protective custody, diagnostic evaluation,  
6 medical, psychiatric, psychological and social service care,  
7 vocational rehabilitation and career counseling, which may be  
8 extended to alcoholics, drug-impaired and intoxicated persons;  
9 and

10 ~~[J.]~~ "~~consistent with the least drastic means~~  
11 ~~principle~~" ~~means that the habilitation or treatment and the~~  
12 ~~conditions of habilitation or treatment for the client~~  
13 ~~separately and in combination:~~

14 ~~(1) are no more harsh, hazardous or intrusive~~  
15 ~~than necessary to achieve acceptable treatment objectives for~~  
16 ~~such client;~~

17 ~~(2) involve no restrictions on physical~~  
18 ~~movement and require no residential care except as reasonably~~  
19 ~~necessary for the administration of treatment or for the~~  
20 ~~protection of such client or another from physical injury; and~~

21 ~~(3) are conducted at the suitable available~~  
22 ~~facility closest to the client's place of residence;~~

23 ~~K.~~ "~~likely to inflict serious physical harm on~~  
24 ~~himself~~" ~~means that it is more likely than not that in the near~~  
25 ~~future the person will attempt to commit suicide or will cause~~

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1 ~~serious bodily harm to himself by violent or passive or other~~  
2 ~~self-destructive means as evidenced by behavior causing,~~  
3 ~~attempting or threatening the infliction of serious bodily harm~~  
4 ~~to himself; and~~

5 L. ~~"likely to inflict serious physical harm on~~  
6 ~~another" means that it is more likely than not that in the near~~  
7 ~~future the person will inflict serious, unjustified bodily harm~~  
8 ~~on another person or commit a criminal sexual offense as~~  
9 ~~evidenced by behavior causing, attempting or threatening such~~  
10 ~~harm, which behavior gives rise to a reasonable fear of such~~  
11 ~~harm from that person]~~

12 N. "treatment facility" means any institution under  
13 the supervision of the division and approved by the substance  
14 abuse bureau of the division for the care and treatment of  
15 alcoholics or drug-impaired persons, or any public institution  
16 approved by the bureau for the care and treatment of alcoholics  
17 or drug-impaired persons, but not specifically under the  
18 supervision of the division; or any other facility that  
19 provides any of the services specified in the Detoxification  
20 Reform Act and is licensed by the department."

21 Section 3. Section 43-2-3 NMSA 1978 (being Laws 1989,  
22 Chapter 378, Section 4) is amended to read:

23 "43-2-3. POLICY OF STATE REGARDING ALCOHOLISM --It is the  
24 policy of this state that ~~[alcoholics and]~~ intoxicated and  
25 incapacitated persons may not be subjected to criminal

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1 prosecution because of their consumption of drugs or alcoholic  
2 beverages, but rather should be afforded protection. It is  
3 further the policy of this state that alcoholics and drug-  
4 impaired persons should be afforded a continuum of treatment in  
5 order that they may lead normal lives as productive members of  
6 society. "

7 Section 4. Section 43-2-5 NMSA 1978 (being Laws 1949,  
8 Chapter 114, Section 3, as amended) is amended to read:

9 "43-2-5. DUTIES OF SUBSTANCE ABUSE BUREAU. -- The substance  
10 abuse bureau of the division shall study the problem of  
11 alcoholism and drug abuse, including methods and facilities  
12 available for the care, custody, detention, treatment,  
13 employment and rehabilitation of persons addicted to the  
14 intemperate use of spirituous or intoxicating liquors or drugs.  
15 The bureau shall promote meetings for the discussion of  
16 problems confronting clinics and agencies engaged in the  
17 treatment and rehabilitation of alcoholics and drug-impaired  
18 persons and shall disseminate information on the subject of  
19 alcoholism and drug abuse for the assistance and guidance of  
20 residents and courts of the state. The bureau shall suggest to  
21 the division reasonable regulations respecting the care and  
22 treatment of patients and persons committed to state  
23 institutions by reason of alcoholism or impairment due to drugs  
24 being a primary or contributory factor to the cause for such  
25 commitment, and the division, with the approval of the

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1 secretary of health [~~and environment~~], shall make such  
2 reasonable regulations respecting the care and treatment of  
3 patients and persons committed to the bureau's care and the  
4 management of the bureau's affairs as it deems necessary. The  
5 [~~health and environment~~] department shall adopt and may amend  
6 and repeal rules and regulations for acceptance of persons into  
7 treatment programs, considering available treatment resources  
8 and facilities, for the purpose of early and effective  
9 treatment of alcoholics and intoxicated persons [~~and persons~~  
10 ~~impaired by drugs~~]. In establishing the rules and regulations,  
11 the division shall be guided by the following standards:

12 A. if possible, a patient shall be treated on a  
13 voluntary rather than an involuntary basis;

14 B. a patient shall be initially assigned or  
15 transferred to outpatient or intermediate treatment, unless  
16 [~~he~~] the patient is found to require inpatient treatment;

17 C. a person shall not be denied treatment solely  
18 because [~~he~~] the person has withdrawn from treatment against  
19 medical advice on a prior occasion or because [~~he~~] the person  
20 has relapsed after earlier treatment;

21 D. an individual treatment plan shall be prepared  
22 and maintained on a current basis for each patient; and

23 E. provisions shall be made for a continuum of  
24 coordinated treatment services, so that a person who leaves a  
25 facility or a form of treatment will have available and utilize

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1 other appropriate treatment. "

2 Section 5. Section 43-2-8 NMSA 1978 (being Laws 1977,  
3 Chapter 374, Section 5, as amended) is amended to read:

4 "43-2-8. EMERGENCY COMMITMENT. --

5 A. An intoxicated or [~~drug-impaired~~] incapacitated  
6 person may be committed to [~~an approved public or private~~] a  
7 treatment facility at the request of an authorized person for  
8 emergency treatment, if [~~he~~] the person:

9 (1) becomes disorderly in a public place;

10 (2) is unable to care for the person's own  
11 safety;

12 [~~(1)~~] (3) has threatened, attempted or  
13 inflicted physical harm on himself or another;

14 (4) has threatened, attempted or inflicted  
15 material damage to the person's own property or any damage to  
16 the property of another;

17 [~~(2)~~] (5) is likely to inflict serious  
18 physical harm on himself;

19 [~~(3)~~] (6) is likely to inflict serious  
20 physical harm on another; [~~unless committed~~

21 (4) (7) is incapacitated by alcohol or drugs;  
22 or

23 [~~(5)~~] (8) has been taken into protective  
24 custody three or more times within thirty consecutive days by a  
25 peace officer or public service officer because of [~~his~~] the

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1 ~~person's intoxicated [or drug-impaired] condition [as provided~~  
2 ~~for in Subsection C of Section 43-2-18 NMSA 1978, provided~~  
3 ~~there is space available in a treatment facility for that~~  
4 ~~person].~~

5 A refusal to undergo treatment does not constitute  
6 conclusive evidence of lack of judgment as to the need for  
7 treatment.

8 B. ~~[The certifying physician, spouse, guardian or~~  
9 ~~relative of the person to be committed or any other responsible~~  
10 ~~person, including a public employee or elected official, may]~~

11 An authorized person shall make a written application for  
12 commitment under this section, directed to the [administrator]  
13 administration of the [approved-public] treatment facility or  
14 the district attorney where the proposed [patient] client is in  
15 residence or is present [who]. When the client is present, the  
16 district attorney shall direct the application to the

17 [administrator] administration of [an approved public or  
18 private] a treatment facility. The application shall state  
19 facts [to] in support of the need for protective custody or  
20 emergency treatment [consistent with the least drastic means  
21 principle, and, unless a medical examination has been refused,  
22 shall be accompanied by a physician's certificate, except as  
23 provided in this section, stating that he has examined the  
24 person sought to be committed within two days before the  
25 certificate's date and facts supporting the need for emergency

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1 ~~treatment. A physician employed by the admitting facility or~~  
2 ~~the division is not eligible to be the certifying physician. A~~  
3 ~~peace officer or public service officer submitting an~~  
4 ~~application for emergency commitment pursuant to Paragraph (5)~~  
5 ~~of Subsection A of this section shall not be required to~~  
6 ~~present with the application a physician's certificate or~~  
7 ~~evidence of refusal of medical examination, but shall certify~~  
8 ~~three or more dates from the record of protective custody~~  
9 ~~maintained as required by Subsection D of Section 43-2-22 NMSA~~  
10 ~~1978 on which the intoxicated or drug-impaired person was~~  
11 ~~placed in protective custody, which dates are within the thirty~~  
12 ~~days preceding the date upon which the application is~~  
13 ~~submitted].~~

14 C. Upon approval of the application by the  
15 [administrator] administration in charge of the [approved  
16 public or private] treatment facility, the person shall be  
17 brought to the facility [by the applicant] for commitment [the  
18 person's spouse, the person's guardian, any other interested  
19 person or by a peace officer if the applicant for commitment,  
20 the person's spouse, the person's guardian or any other  
21 interested person is unable to bring the person to the  
22 facility] by the applicant or by an authorized person or by a  
23 peace officer or public service officer if the application for  
24 commitment was submitted pursuant to Paragraph [~~(5)~~] (8) of  
25 Subsection A of this section. The person shall be retained at

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1 the facility to which ~~[he]~~ the person was admitted or  
2 transferred to another appropriate public or private treatment  
3 facility until discharged under Subsection E of this section.

4 D. The ~~[administrator]~~ administration in charge of  
5 ~~[an approved public or private]~~ a treatment facility ~~[shall]~~  
6 may, in its discretion, refuse an application ~~[if in his~~  
7 ~~opinion the application and certificate fail to sustain the~~  
8 ~~grounds for commitment]~~.

9 E. When ~~[on the advice of the medical staff]~~ the  
10 ~~[administrator]~~ administration determines that the grounds for  
11 commitment no longer exist, ~~[he]~~ it shall discharge a person  
12 committed under this section. No person committed under this  
13 section may be detained in any treatment facility for more than  
14 ~~[five]~~ three days. If a petition for involuntary commitment  
15 under Section 43-2-9 NMSA 1978 has been filed within the ~~[five]~~  
16 three days and the ~~[administrator]~~ administration in charge of  
17 ~~[an approved public or private]~~ a treatment facility finds that  
18 grounds for emergency commitment still exist, ~~[he]~~ it may  
19 detain the person until the petition has been heard and  
20 determined, but no longer than ten days after filing the  
21 petition.

22 F. A copy of the written application for commitment  
23 and ~~[the physician's certificate and]~~ a written explanation of  
24 the person's right to counsel shall be given by the  
25 administration to the person ~~[and to the district attorney]~~

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1 within twelve hours after commitment. [~~by the administrator,~~  
2 ~~who~~] The administration shall also provide a reasonable  
3 opportunity for the person to [~~consult~~] contact counsel."

4 Section 6. Section 43-2-9 NMSA 1978 (being Laws 1977,  
5 Chapter 374, Section 6, as amended) is amended to read:

6 "43-2-9. COMMITMENT--HEARING. --

7 A. A person may be committed to the custody of [~~the~~  
8 ~~substance abuse bureau of the division or to an approved~~  
9 ~~licensed private~~] a treatment facility by the district court  
10 upon the petition of the district attorney on behalf of the  
11 person's spouse, guardian or relative, the certifying physician  
12 or the administrator in charge of any [~~approved public or~~  
13 ~~private~~] treatment facility. The petition shall allege that  
14 the person is an alcoholic or drug impaired and habitually  
15 lacks self-control as to the use of alcoholic beverages or  
16 drugs and that [~~he~~] the person has threatened, attempted or  
17 inflicted physical harm on himself or another and that unless  
18 committed is likely to inflict physical harm on himself or  
19 another or that [~~he~~] the person is incapacitated by alcohol or  
20 drugs. A refusal to undergo treatment does not constitute  
21 evidence of lack of judgment as to the need for treatment. The  
22 petition shall be accompanied by a certificate of a licensed  
23 physician who has examined the person within two days before  
24 submission of the petition, unless the person whose commitment  
25 is sought has refused to submit to a medical examination, in

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1 which case the fact of refusal shall be alleged in the  
2 petition. The certificate shall set forth the physician's  
3 findings in support of the allegations of the petition.

4 B. Upon filing the petition, the court shall fix a  
5 date for a hearing no later than ten days after the date the  
6 petition was filed. The person whose commitment is sought  
7 shall be represented by counsel at all stages of the proceeding  
8 regardless of [~~his~~] the person's wishes. The court shall  
9 appoint counsel if the person whose commitment is sought is  
10 indigent. A copy of the petition and notice of hearing,  
11 including the date fixed by the court and appointed counsel,  
12 shall be served on the petitioner, the person whose commitment  
13 is sought, a parent or a legal guardian if [~~he~~] the person is a  
14 minor, the [~~administrator~~] administration in charge of [~~an~~  
15 ~~approved public or private~~] a treatment facility to which [~~he~~]  
16 the person has been committed for emergency care and any other  
17 person the court believes advisable. Also to be served upon  
18 the person whose commitment is sought is an advice of rights  
19 informing the person that [~~he~~] the person has a right to be  
20 examined by a licensed physician of [~~his~~] the person's choice  
21 prior to the hearing date. If the person is unable to obtain a  
22 licensed physician and requests examination by a physician  
23 within five days of service of the petition, the court shall  
24 employ a licensed physician. If the person whose commitment is  
25 sought refuses to see a licensed physician and the prosecuting

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1 attorney believes that such examination is necessary, the  
2 prosecuting attorney upon motion may ask the court to grant  
3 leave for an examination to be ordered against the person whose  
4 commitment is sought. Cost for the examination shall be borne  
5 by the county in which the person resides if ~~he~~ the person is  
6 indigent. Upon the court granting such motion, the court may  
7 issue an order to the person informing him that he shall be  
8 examined by a licensed physician at the date, time and place  
9 stated in the order, and the hearing shall be continued for a  
10 period not to exceed seven days.

11 C. At the hearing, the court shall hear all  
12 relevant testimony, including, if possible, the testimony of at  
13 least one licensed physician who has examined the person whose  
14 commitment is sought. The person shall be present unless the  
15 court or ~~his~~ the person's counsel believes that ~~his~~ the  
16 person's presence is likely to be injurious to ~~him~~ the person  
17 or ~~he~~ the person is so incapacitated that ~~he~~ the person  
18 cannot understand the nature of the proceeding. The person  
19 shall at all times be represented by counsel. The court shall  
20 examine the person in open court or, if advisable, shall  
21 examine the person out of court. If the person has failed to  
22 appear at a court-ordered examination prior to the hearing and  
23 there is sufficient evidence to believe that the allegations of  
24 the petition are true or if the court believes that more  
25 medical evidence is necessary, the court may make a temporary

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1 order committing ~~[him]~~ the person to ~~[the substance abuse~~  
2 ~~bureau or an approved licensed private]~~ a treatment facility  
3 for a period of not more than five days for the purposes of  
4 diagnostic examination.

5 D. If after hearing all relevant evidence,  
6 including the results of any diagnostic examination by ~~[the~~  
7 ~~substance abuse bureau or an approved licensed private]~~ a  
8 treatment facility, the court finds that grounds for  
9 involuntary commitment have been established by clear and  
10 convincing proof, it shall make an order of commitment to ~~[the~~  
11 ~~substance abuse bureau or to an approved licensed private]~~ a  
12 treatment facility. It shall not order commitment of a person  
13 unless it determines that the appropriate treatment for ~~[him]~~  
14 the person is available and the treatment is likely to be  
15 beneficial.

16 E. A person committed under this section shall  
17 remain in the custody of ~~[the substance abuse bureau or an~~  
18 ~~approved licensed private]~~ a treatment facility for treatment  
19 for a period of thirty days unless sooner discharged. At the  
20 end of the thirty-day period, ~~[he]~~ the person shall be  
21 discharged automatically unless the ~~[substance abuse bureau or~~  
22 ~~an approved licensed private]~~ administration of a treatment  
23 facility, before the expiration of the period, obtains a court  
24 order for ~~[his]~~ the person's recommitment upon the grounds set  
25 forth in Subsection A of this section for a period of ninety

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1 days unless sooner discharged. If a person has been committed  
2 because ~~[he]~~ the person is likely to inflict physical harm on  
3 another, the ~~[substance abuse bureau or an approved licensed~~  
4 ~~private]~~ treatment facility shall apply for recommitment if  
5 after examination it is determined that the likelihood still  
6 exists.

7 F. A person recommitment under Subsection E of this  
8 section who has not been discharged by ~~[the substance abuse~~  
9 ~~bureau or an approved licensed private]~~ a treatment facility  
10 before the end of the ninety-day period shall be discharged at  
11 the expiration of that period unless the ~~[substance abuse~~  
12 ~~bureau or an approved licensed private]~~ administration of a  
13 treatment facility, before the expiration of the period,  
14 obtains a court order on the grounds set forth in Subsection A  
15 of this section for recommitment for a further period not to  
16 exceed ninety days. If a person has been committed because  
17 ~~[he]~~ the person is likely to inflict physical harm on another,  
18 the ~~[substance abuse bureau or an approved licensed private]~~  
19 treatment facility shall apply for recommitment if after  
20 examination it is determined that the likelihood still exists.  
21 Only two recommitment orders under Subsections E and F of this  
22 section are permitted.

23 G. Upon the filing of a petition for recommitment  
24 under Subsection E or F of this section, the court shall fix a  
25 date for hearing no later than ten days after the date the

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1 petition was filed. A copy of the petition and of the notice  
2 of hearing, including the date fixed by the court, shall be  
3 served on the petitioner, the person whose commitment is  
4 sought, ~~[his]~~ the person's next of kin other than the  
5 petitioner, the original petitioner under Subsection A of this  
6 section, if different from the petitioner for recommitment, one  
7 of ~~[his]~~ the person's parents or ~~[his]~~ the person's legal  
8 guardian if ~~[he]~~ the person is a minor and any other person the  
9 court believes advisable. At the hearing, the court shall  
10 proceed as provided in Subsection C of this section.

11 H. ~~[The substance abuse bureau or an approved~~  
12 ~~licensed private]~~ A treatment facility shall provide for  
13 adequate and appropriate treatment of a person committed to its  
14 custody. ~~[The substance abuse bureau or an approved licensed~~  
15 ~~private]~~ A treatment facility may transfer any person committed  
16 to its custody from one ~~[approved public]~~ treatment facility to  
17 another only if transfer is medically advisable or if the  
18 person's parent, spouse, sibling, adult child or guardian  
19 requests transfer and the administration of the second  
20 treatment facility consents.

21 I. A person committed to the custody of ~~[the~~  
22 ~~substance abuse bureau or an approved licensed private]~~ a  
23 treatment facility for treatment shall be discharged at any  
24 time before the end of the period for which ~~[he]~~ the person has  
25 been committed if either of the following conditions is met:

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1 (1) in case of an alcoholic or drug-impaired  
2 person committed on the grounds of likelihood of infliction of  
3 physical harm upon another, that ~~[he]~~ the person is no longer  
4 an alcoholic or impaired by drugs or the likelihood no longer  
5 exists; or

6 (2) in case of an alcoholic or person impaired  
7 by drugs committed on the grounds of the need for treatment and  
8 incapacity, that the incapacity no longer exists, further  
9 treatment will not be likely to bring about significant  
10 improvement in the person's condition or treatment is no longer  
11 adequate or appropriate.

12 ~~[J. If an approved private treatment facility~~  
13 ~~agrees with the request of a patient or his parent, spouse,~~  
14 ~~sibling, adult child or guardian to accept the patient for~~  
15 ~~treatment, the administrator of the public treatment facility~~  
16 ~~shall transfer him to the private treatment facility.~~

17 ~~K.]~~ J. A person committed under this section may at  
18 any time seek to be discharged from commitment by writ of  
19 habeas corpus.

20 ~~[L.]~~ K. The venue for proceedings under this  
21 section is the district court for the county in which the  
22 person to be committed resides or is present. "

23 Section 7. Section 43-2-10 NMSA 1978 (being Laws 1949,  
24 Chapter 114, Section 8, as amended) is amended to read:

25 "43-2-10. PROBATION--DISCHARGE.--Any person committed to  
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1 the custody of ~~[the substance abuse bureau or an approved~~  
2 ~~licensed private]~~ a treatment facility of the division ~~[under]~~  
3 pursuant to Section 43-2-9 NMSA 1978 may, ~~[notwithstanding]~~  
4 notwithstanding the terms of any order of commitment, be  
5 permitted to go at large on probation and without custody or  
6 restraint for such time and under such conditions as the ~~[chief~~  
7 ~~of the substance abuse bureau or an approved licensed private]~~  
8 administration of the treatment facility judges best. Persons  
9 placed in custody ~~[under any provision of Sections 43-2-2~~  
10 ~~through 43-2-15 NMSA 1978]~~ pursuant to the Detoxification  
11 Reform Act may be discharged by ~~[the chief of the substance~~  
12 ~~abuse bureau or an approved licensed private]~~ a treatment  
13 facility pursuant to division regulations. "

14 Section 8. Section 43-2-11 NMSA 1978 (being Laws 1949,  
15 Chapter 114, Section 9, as amended) is amended to read:

16 "43-2-11. VOLUNTARY ~~[PATIENTS]~~ CLIENTS. --

17 A. ~~[Upon the recommendation of the chief of the~~  
18 ~~substance abuse bureau of the division]~~ The ~~[administrator]~~  
19 administration of ~~[any approved public]~~ a treatment facility  
20 ~~[shall]~~ may receive any intoxicated person, alcoholic or drug-  
21 impaired person who applies to be received into the facility  
22 ~~[treat him in the same manner as if committed by the district~~  
23 ~~court and release him pursuant to the rules and regulations of~~  
24 ~~the division]~~. If the voluntary client is:

25 (1) intoxicated, the client shall be

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1 discharged pursuant to Subsection E of Section 43-2-8 NMSA  
2 1978; or

3 (2) not intoxicated, the client shall be  
4 discharged at the discretion of the administration or at the  
5 request of the client.

6 B. If a voluntary [~~patient~~] client leaves [~~an~~  
7 ~~approved public~~] a treatment facility with or against the  
8 advice of the [~~administrator in charge of the facility~~]  
9 administration in charge of the facility, the division shall  
10 make reasonable provisions for [~~his~~] the client's  
11 transportation to another facility or to [~~his~~] the client's  
12 home. If [~~he~~] the client has no home, [~~he shall be assisted~~]  
13 the division shall assist the client in obtaining shelter.

14 C. [~~Any~~] A resident of the state who voluntarily  
15 submits himself for treatment in accordance with [~~Sections~~  
16 ~~43-2-2 through 43-2-15 NMSA 1978~~] the Detoxification Reform Act  
17 shall not forfeit or abridge thereby any of [~~his~~] the  
18 resident's rights as a citizen of the state. The fact that  
19 [~~he~~] the resident has submitted himself for treatment or that  
20 [~~he~~] the resident has been given help or guidance shall not be  
21 used against [~~him~~] the resident in any proceeding in any court.  
22 The record of [~~any such~~] the voluntary [~~patient~~] client shall  
23 be confidential and shall not be divulged except on order of  
24 the court. "

25 Section 9. Section 43-2-19 NMSA 1978 (being Laws 1973,

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1 Chapter 331, Section 4) is amended to read:

2 "43-2-19. SEARCH BY PEACE OFFICER OR PUBLIC SERVICE  
3 OFFICER--NO LIABILITY.--A peace officer or public service  
4 officer may, if ~~[he]~~ the officer reasonably believes it  
5 necessary for ~~[his]~~ the officer's own safety, make a protective  
6 search of an intoxicated person before transporting ~~[him]~~ the  
7 person to a residence, ~~[health-care]~~ treatment facility or  
8 jail. No peace officer or public service officer shall be held  
9 criminally or civilly liable for assault, false imprisonment or  
10 other alleged torts or crimes on account of reasonable measures  
11 taken under the authority of the Detoxification Reform Act, if  
12 such measures were, in fact, reasonable and did not involve use  
13 of excessive or unnecessary force."

14 Section 10. Section 43-2-20 NMSA 1978 (being Laws 1973,  
15 Chapter 331, Section 5) is amended to read:

16 "43-2-20. NOTIFICATION OF FAMILY.--Whenever an  
17 intoxicated person is transported ~~[by a peace officer or public~~  
18 ~~service officer]~~ to a ~~[health-care]~~ treatment facility ~~[or~~  
19 ~~jail]~~, the ~~[person]~~ administration in charge of that facility  
20 ~~[or jail at the time]~~ shall ~~[see]~~ ensure that a responsible  
21 member of the intoxicated person's family is notified of ~~[his]~~  
22 the person's presence there as soon as practicable."

23 Section 11. Section 43-2-21 NMSA 1978 (being Laws 1973,  
24 Chapter 331, Section 6) is amended to read:

25 "43-2-21. LIABILITY FOR COSTS.--Any intoxicated person

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1 having transportation, shelter or treatment furnished to ~~[him]~~  
2 the person as an intoxicated person under the Detoxification  
3 Reform Act shall be liable to the furnishing city, county or  
4 ~~[health care or other]~~ treatment facility for its reasonable  
5 costs in providing that transportation, shelter ~~[and]~~ or  
6 treatment. "

7 Section 12. Section 43-2-22 NMSA 1978 (being Laws 1973,  
8 Chapter 331, Section 7, as amended) is amended to read:

9 "43-2-22. ~~[TRANSPORTATION TO JAIL]~~ PROTECTIVE CUSTODY. --

10 ~~[A.—An intoxicated person held in protective~~  
11 ~~custody under the Detoxification Act shall be held in~~  
12 ~~protective custody until the alcohol concentration in the~~  
13 ~~person's blood or breath is less than five one-hundredths;~~  
14 ~~provided that the local governing body of any home-rule~~  
15 ~~municipality may by ordinance extend the protective custody of~~  
16 ~~intoxicated persons under the provisions of this subsection to~~  
17 ~~a maximum period of no more than seventy-two hours; and~~  
18 ~~provided further that, within twenty-four hours of the original~~  
19 ~~custody, a licensed physician, or a physician's assistant or~~  
20 ~~registered nurse functioning directly under standards~~  
21 ~~established by a licensed physician, certifies that extension~~  
22 ~~of the term of protective custody up to a maximum of seventy-~~  
23 ~~two hours is in the best medical interest of the person in~~  
24 ~~protective custody. Upon such certification, the intoxicated~~  
25 ~~person may be retained in protective custody only in a~~

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1 ~~detoxification facility or regional alcoholism treatment center~~  
2 ~~for the remainder of the seventy two hours.~~

3 ~~B.]~~ A. An intoxicated person transported to a  
4 ~~[health care]~~ treatment facility ~~[under]~~ pursuant to the  
5 Detoxification Reform Act shall not be detained at the  
6 facility:

7 (1) once ~~[he]~~ the person is no longer  
8 intoxicated; or

9 (2) for more than ~~[forty-eight]~~ seventy-two  
10 hours after admission, unless ~~[he]~~ the person is committed  
11 ~~[under]~~ pursuant to Section 43-2-8 NMSA 1978.

12 ~~[C.]~~ B. An intoxicated person held in protective  
13 custody ~~[at a jail or transported to a health care facility~~  
14 ~~under]~~ pursuant to the Detoxification Reform Act shall not be  
15 considered to have been arrested or charged with any crime.

16 ~~[D. A peace officer or public service officer shall~~  
17 ~~record the date, time and place of the protective custody of~~  
18 ~~any intoxicated person. This]~~

19 C. A record of protective custody shall not be  
20 considered as an arrest or criminal record.

21 ~~[E. For the purposes of this section, the~~  
22 ~~determination of alcohol concentration shall be based on the~~  
23 ~~grams of alcohol in one hundred milliliters of blood or the~~  
24 ~~grams of alcohol in two hundred ten liters of breath.]"~~

25 Section 13. A new section of Chapter 43, Article 2 NMSA

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1978 is enacted to read:

"[NEW MATERIAL] CIVIL LIABILITY. --Treatment facilities and their officers, directors and employees shall not be liable to any person held pursuant to the Detoxification Reform Act, absent proof of gross negligence or intentional misconduct."

Section 14. REPEAL. --Sections 43-2-16 through 43-2-18 NMSA 1978 (being Laws 1973, Chapter 331, Sections 1 through 3, as amended) are repealed.

Section 15. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2005.